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Attorney for Marty and Wendy Andres

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

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IN RE: \_\_\_\_\_ )  
                        ) Bankruptcy No.: 06-60855-RBK-11  
INCREDIBLE AUTO SALES INC.,         )  
                        Debtor.              )

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**MOTION TO MODIFY STAY**

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The Motion of Marty and Wendy Andres (“Andres”), creditor herein, respectfully represents:

1. The Debtor filed a Petition in this Court under Chapter 11 of the Bankruptcy Code on October 17, 2006.
2. Debtor is in possession of collateral which is owned by Andres and which is subject to Russell County Federal Credit Union’s first priority lien. Pursuant to Mont. LBR 4001-1, Andres provides the following information:
  - A. The present balance owing to Russell County Federal Credit Union (“Credit Union”), excluding any pre-computed interest or other unearned charges, is \$4,781.60. At the time of Debtor taking possession the balance owed to Credit Union was \$5,560.00. The reduction in balance is due to the fact that Andres have made payment to Credit

Union in order to keep the debt owed Credit Union current in order to protect their credit rating.

- B. The date upon which the Credit Union debt was incurred was February 5, 2005.
- C. The Credit Union holds a security interest upon the following described property which, based upon their schedule B and conversation with Ken Cornelius, is in possession of the Debtor:

1998 Ford Expedition, VIN 1FMPU18L0WLB20441

- D. On February 5, 2005, Andres entered into a Retail Installment Contract and Disclosure (the "Contract"), in writing, with Jim Taylor Motors for the purchase of this vehicle. A true and correct copy of the Contract is attached hereto as Exhibit "A" and by this reference incorporated herein. The vehicle was financed with Credit Union. Pursuant to the Contract, Credit Union has a security interest in the vehicle. Credit Union perfected that security interest by filing a Notice of Lien Filing with the Montana Department of Motor Vehicles. A true and correct copy of the Notice of Lien Filing and current registration is attached hereto as Exhibit "B" and by this reference incorporated herein.
- E. On or about September 2, 2006, Andres entered into a Retail Installment Sale Contract with Debtor wherein the Vehicle was traded to Debtor as part of the transaction in which they purchased a vehicle from Debtor. A true and correct copy of the retail contract is attached hereto as Exhibit "C" and by this reference incorporated herein. In the ordinary course of business, the dealer pays off the outstanding balance of the debt against the trade-in vehicle, and obtains title to the

same. This did not happen in the present case. Debtor did not pay Credit Union the balance owed on the vehicle and although Debtor has the title of the vehicle in its possession, Andres have not transferred title to Debtor. By failing to pay off this vehicle, Debtor has breached its agreement with Andres.

- F. A description of Andres vehicle and Credit Union's collateral, including its location is as follows:

1998 Ford Expedition 1FMPU18L0WLB20 located in Debtor's possession.

- G. The fair market value of Russell County Federal Credit Union's collateral is estimated to be at least \$4781.60.
- H. Andres currently are the title owners of this vehicle and there are no other security interests or liens which have priority over that of Russell County Federal Credit Union.
- I. The Contract is not in default because of the payment made by Andres but will be in default if payment is not made by January 22, 2006.
- J. This Motion is made under and pursuant to 11 U.S.C., §362(d)(i) and §362(d)(ii).
- K. Other facts which are relevant in determining whether relief should be granted are as follows: Andres are current in their payments under the Contract with Debtor financed with Bank of America. Debtor was paid for any interest they made have had in the vehicle by the financing that occurred pursuant to the contract with Debtor and lifting the stay allows Andres to sell the vehicle and pay the Credit Union's debt and thereby preserve Andres' credit rating.

3. Andres further represent that in the event the court grants the Motion, Andres will sell the vehicle and pay the debt owed Credit Union in accordance with applicable non-bankruptcy law, and will dispose of the vehicle in a commercially reasonable manner.

WHEREFORE, Andres respectfully requests the court to grant this Motion to Modify the stay imposed by Section 362(a) of the Bankruptcy Code.

Dated this 22nd day of December, 2006.

SEMANSKY LAW OFFICE

/s/ Lisa Swan Semansky  
LISA SWAN SEMANSKY

**NOTICE TO DEBTOR(S)**

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**If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:**

**NOTICE OF HEARING**  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Location: \_\_\_\_\_

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court's website at [www.mtb.uscourt.gov](http://www.mtb.uscourt.gov). In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

**If you fail to file a written response to the above Motion to Modify Stay with the**

**particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.**

DATED this 22nd day of December, 2006.

By: /s/ Lisa Swan Semansky  
Attorney for Creditor

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CERTIFICATE OF SERVICE

I, Lisa Swan Semansky, do hereby certify under penalty of perjury that on December 22, 2006, I served a true and correct copy of the Motion to Modify Stay upon the person or persons below, either by electronic means or U.S. Postal Services mailing first class postage prepaid, in a properly addressed envelope as follows:

Marty and Wendy Andres  
179 Browne Street South  
Highwood, MT 59450

Incredible Auto Sales LLC  
1832 King Ave W  
Billings, MT 59102

**VIA ECF NOTICE:**  
Clarke B. Rice  
2951 King Ave West  
Billings, MT 59102

William L. Needler  
555 Stokie Blvd Ste 500  
Northbrook, IL 60062

Neal G. Jensen  
Assistant U.S. Trustee  
Liberty Center, Ste 204  
Great Falls, MT 59401

BY: /s/ Lisa Swan Semansky  
LISA SWAN SEMANSKY